SUPREME COURT, U. S.
JUL 20 1961
JAMES R. BROWNING, Clerk

No. 180

In the Supreme Court of the United States

OCTOBER TERM, 1961

GUSTAVE B. GARFIELD, PETITIONER

v.

EDMUND PALMIERI

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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By this private civil action against respondent, a United States district judge, petitioner seeks to have expunged from the records of the District Court for the Southern District of New York the first two paragraphs of the opinion in *Fleischer* v. *A. A. P. Inc.*, 180 F. Supp. 717, 719-721 (S.D. N.Y.) (Pet., pp. 6-9). Petitioner, relying on a "point of personal privilege" as an attorney, complains that he has been damaged in reputation and property as a result

of these paragraphs, which he alleges to be "false, malicious and libelous" (Pet., pp. 5, 9).[1]

The challenged portion of respondent's opinion was addressed to an application which petitioner had filed under 28 U.S.C. 144 to disqualify respondent from further consideration of the *Fleischer* litigation which was then before him for decision. In developing the circumstances which prompted the application for disqualification, Judge Palmieri recited a statement made by the Court of Appeals when the same case had been previously before it. *Fleischer* v. *Phillips*, 264 F. 2d 515, 518 (C.A. 2). Judge Palmieri went on to indicate that he considered the Court of Appeals' statement as a rebuke to petitioner personally, rather than to Fleischer, the client. It is this interpretation which petitioner insists is defamatory and seeks to remove.

Petitioner brought this action (in the Eastern District of New York) for declaratory and other non-monetary relief, asserting a cause of action under certain federal civil rights legislation, *i.e.*, 42 U.S.C. 1988, 28 U.S.C. 1343(4), and 18 U.S.C. 241. The complaint was dismissed by Judge Bartels as failing to state a claim upon which relief could

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[1] Petitioner explicitly limits his demand in this case to expunging the alleged defamatory remarks from the record in the district court (Pet., p. 6). In a separate action on these same facts, he seeks $250,000 from respondent for the alleged libel. The complaint in that suit was dismissed, *Garfield* v. *Palmieri*, 193 F. Supp. 137 (S.D. N.Y.), and petitioner's appeal is currently pending before the United States Court of Appeals for the Second Circuit.

be granted and the Court of Appeals affirmed on the opinion below. There is plainly no warrant for further review.

1. In recently reaffirming the principle that a judge cannot be held personally liable for his judicial acts, this Court noted that it "early held that judges of courts of superior or general authority are absolutely privileged as respects civil suits to recover for actions taken by them in the exercise of their judicial functions, irrespective of the motives with which those acts are alleged to have been performed, *Bradley* v. *Fisher*, 13 Wall 335 * * *." *Barr* v. *Mateo*, 360 U.S. 564, 569. See also *Howard* v. *Lyons*, 360 U.S. 593; *Randall* v. *Brigham*, 7 Wall. 523; *Bretson* v. *Woodrough*, 164 F. 2d 107 (C.A. 8); *Gregoire* v. *Biddle*, 177 F. 2d 579 (C.A. 2); *Meredith* v. *Van Oosterhout*, 286 F. 2d 216 (C.A. 8), certiorari denied, 365 U.S. 835; *Sauber* v. *Gliedman*, 283 F.2d 941 (C.A. 7), certiorari denied, 366 U.S. 906. The Court has regarded this judicial privilege as a full "exemption from civil action," designed to prevent all need for judges to vindicate their official acts in private litigation, to the end that their independence of judgment will not be influenced by personal considerations. *Randall* v. *Brigham*, 7 Wall. 523, 536. Accordingly, the privilege is broad enough to embrace private actions of all kinds, whether brought by dissatisfied parties or their counsel, and whether for damages or for other relief.

In demanding the excision of the statements to which he objects, petitioner devotes most of his petition to an attack upon the correctness of Judge Pal-

mieri's refusal to disqualify himself from the *Fleischer* case. Even if there were some merit to these contentions, the appropriate forum in which to maintain them would clearly not be a private action against the judge, but on appellate review in the *Fleischer* litigation.

2. There is another reason why this suit must fail. Petitioner seeks to require a district judge, in his private capacity, to take action which would affect records in the official custody of the judicial branch of the federal government. But such records are not those of the judge personally, to be reached through a private suit against him. They are records belonging to the United States, for the disposition of which the courts and Congress are responsible. See, *e.g.*, 28 U.S.C. 457; 44 U.S.C. 366-380.

Respectfuly submitted,

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